

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

October 6, 2011

Edgar W. Lewis, Sr.
30360 Bunting Road
Dagsboro, Delaware 19939

**Re: *Lewis v. Allen Family Foods, et al.*;
 C.A. No. S10A-12-002**

On Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

Date Submitted: September 26, 2011
Date Decided: October 6, 2011

Dear Mr. Lewis:

Edgar W. Lewis, Sr., appeals the decision of the Unemployment Insurance Appeal Board (“the Board”). The Board determined Mr. Lewis was not eligible for the receipt of benefits, pending resolution of his medical condition and employment status in light of a doctor’s certificate certifying his availability for employment. The Board’s decision is affirmed.

Nature and Stage of the Proceedings

Mr. Lewis was employed by Allen Family Foods (“Allen’s”) in July of 2009 as a production worker when he suffered a back injury from a workplace accident. On August 9, 2010, Mr. Lewis visited his physician, Muhammad Ejaz, M.D. Dr. Ejaz executed a letter indicating Mr. Lewis’s work was to be restricted and he could not lift amounts in excess of forty pounds. Mr. Lewis worked August 9, 10, and 11. On August 11, Mr. Lewis experienced pain in his chest and back and went to see the plant nurse, “Diane.” Mr. Lewis showed Diane the letter from Dr. Ejaz. Diane instructed

Mr. Lewis to have his physician submit proof that he had lifted the work restrictions on or before August 21, 2010. Diane placed Mr. Lewis on leave from August 11 through August 21. Diane further told Mr. Lewis that, if he was unable to obtain a release from the work restrictions by August 21, he would be terminated. Mr. Lewis testified at the Board hearing that he filed his claim for benefits after his discussion with Diane.

The Claims Deputy found that Mr. Lewis was ineligible for benefits because there was no separation between Mr. Lewis and Allen's at the time the claim was filed. After a hearing, the Appeals Referee affirmed this decision. The Appeals Referee found that Mr. Lewis had filed his claim on August 8, 2010, but had worked on August 11, 2010. Therefore, the Appeals Referee concluded Mr. Lewis was not unemployed as defined by statute at the time he filed for benefits and, accordingly, he was ineligible for benefits.

Mr. Lewis testified before the Board and contested the Appeals Referee's finding that he had filed his claim on August 8, 2010, a Sunday. Mr. Lewis stated he did not file his claim until after his conversation with the plant nurse on August 11, 2010. The Board acknowledged that the filing date used by the Department of Labor typically relates back to the Sunday prior to the actual filing date in order to ensure payment for the entire week. The Board found that, as of August 11, 2010, Mr. Lewis had left work involuntarily as a result of medical problems and was therefore ineligible for unemployment benefits unless he could prove his ability to work. The Board ordered Mr. Lewis' claim to be reconsidered in light of a doctor's certificate on file. Mr. Lewis appeals this decision.

Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence

in the record.¹ “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”² The Court’s review is limited: “It is not the appellate court’s role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”³

In this case, the Board found:

During the fact-finding process, the Claimant produced to the Division of Unemployment Insurance (“DUI”) what purports to be a letter from Muhammad Ejaz, M.D., dated August 9, 2010, that indicates that the Claimant was restricted to lifting no more than 40 pounds and should not lift any weight above his shoulder. This, apparently, was the note that resulted in the Employer’s nurse instructing the Claimant that he would not be allowed to work until he had presented a medical release from his doctor. Therefore, as of August 11, 2010, the Board finds that the Claimant had left work involuntarily due to medical problems. Because he had left work as a result of medical problems, the Claimant was also ineligible for the receipt of benefits, due to his inability to work. To prove ability to work and, therefore, eligibility for benefits, the Claimant must present a doctor’s certificate certifying his availability. On or about August 24, 2010, Kim Smith, RN, of the Veteran’s Administration, sent a doctor’s certificate to the Department of Labor, to which neither DUI, the Employer, nor the Claimant has paid any attention.

The Board concluded that Mr. Lewis was ineligible for benefits, “*pending resolution of his medical condition and employment status in light of [Ms. Smith’s] certificate.*”⁴

¹ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.”).

² *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super.).

³ *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super.).

⁴ Emphasis added.

The Board's decision is supported by the record. Mr. Lewis was told to leave work due to work restrictions imposed by his treating physician. The unemployment compensation statute provides that an individual is disqualified from the receipt of benefits if he left work voluntarily without good cause attributable to his employment. However, "if an individual has left work involuntarily because of illness, no disqualification shall prevail after the individual becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability...."⁵ Here, a doctor's certificate has been submitted but not considered by the Department of Labor, the Department of Insurance, or Allen's. The Board is correct that Mr. Lewis's claim needs to be reevaluated in light of this certificate. Implicit in the Board's decision is the finding that Mr. Lewis timely filed his claim for benefits after having been directed to leave work due to work restrictions. Mr. Lewis' claim must be reconsidered in light of the doctor's certificate that purports to establish his availability to work.

Conclusion

In light of the foregoing, the Board's decision is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary
cc: Unemployment Insurance Appeal Board
Allen Family Foods

⁵ 19 *Del. C.* § 3314(1).